

EXHIBIT 000

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3
4 SECURITIES AND EXCHANGE COMMISSION,)

5 Plaintiff,)

6 v.) Case No.

7 BARRY C. HONIG, ROBERT LADD, ELLIOT) 18 Civ. 8175 (ER)

8 MAZA, BRIAN KELLER, JOHN H. FORD,)

9 GRQ CONSULTANTS, INC., AND HS)

10 CONTRARIAN INVESTMENTS, LLC,)

11 Defendants.)

12 _____)

13
14 VOLUME 1

15 VIDEOTAPED DEPOSITION OF ARTHUR MARCUS

16 VIA VIDEOCONFERENCE

17 Tuesday, June 21, 2022

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

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15 Videotaped deposition of Arthur Marcus,
16 taken on behalf of the Plaintiff, all parties appearing
17 remotely via Webex, beginning at 10:03 a.m. EST and
18 ending at 1:25 p.m. EST, on Tuesday, June 21, 2022.
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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

1 APPEARANCES:

2
3 On behalf of the Securities and Exchange Commission:

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9 On behalf of the Witness:

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22
23 Also Present:

24 Robert Ladd

1 Q And what's your position there at
2 Sichenzia?

3 A I'm a nonequity partner.

4 Q And how long have you been with Sichenzia?

5 A Since 19 -- since 2012.

6 Q When in 2012 did you join Sichenzia?

7 A August of 2012 I believe.

8 Q I'm sorry, I just didn't hear the first
9 part of that answer.

10 A I believe August of 2012.

11 Q And when you joined, what was your position
12 at Sichenzia?

13 A The same. A nonequity partner.

14 Q And when did you graduate law school?

15 A In 1989.

16 Q Can you just briefly take us through your
17 legal career from your postgraduate graduating law
18 school until Sichenzia?

19 A Sure. I graduated law school and I worked
20 at Kramer Levin after law school in September of 1989.
21 And I worked there into 1991. After that, I left Kramer
22 Levin and went to a firm called Gersten Savage at that
23 time. I --

24 Q And how long were you there?

25 A I stayed there until 2012 when I joined

1 Q And when was that? Was that after 2012 or
2 in 2012?

3 A It was right around 2012. It was pretty
4 much when we got there.

5 Q And what about Harvey Kesner? Did he do
6 work for MGT?

7 A I'm not sure.

8 Q And when you were at Sichenzia, was there a
9 particular contact that Sichenzia had at MGT?

10 A The same. It was the CFO and the CEO at
11 MGT.

12 Q So Mr. Traversa and Mr. Ladd?

13 A Primarily.

14 Q And was there -- was one of them more of a
15 regular contact? Was there more contact with one of
16 them than the other?

17 A Not necessarily, no.

18 Q Were there particular types of matters that
19 Sichenzia contacted Mr. Ladd on as opposed to Mr.
20 Traversa?

21 A Not to my knowledge.

22 Q And did MGT have a principal contact at
23 Sichenzia during its representation of MGT?

24 A Primarily probably Mr. Kaplowitz.

25 Q And were you also a contact direct for --

1 number of years after the first one?

2 A A few years.

3 Q And who from MGT worked on that second
4 financing? I'm sorry. Who from Sichenzia? From
5 Sichenzia.

6 A Mr. Kaplowitz, myself to a very small
7 degree, and I believe Avital Perlman.

8 Q And you said yourself to a small degree on
9 the second financing. What did you work on and what do
10 you mean by that?

11 A I just kind of -- I oversaw certain aspects
12 of -- my memory is. But I didn't draft everything, and
13 I wasn't that involved.

14 Q And Mr. Kaplowitz was the main attorney at
15 Sichenzia involving the second financing?

16 A I don't -- I wasn't that involved so I
17 don't know who was on all the calls.

18 Q What was Ms. Perlman's role?

19 A I believe she was drafting documents.

20 Q And again, was -- were Mr. Ladd and Mr.
21 Traversa Sichenzia's principal contact at MGT for the
22 second financing?

23 A I don't recall.

24 Q What about the first financing in 2012?

25 A I believe Mr. Traversa was there at that

1 recollection.

2 A I was just going to say, yeah, it seems to
3 say that we represented on other matters.

4 Q So you have no recollection of the firm
5 representing Mr. Honig with respect to these two MGT
6 financings?

7 A Correct.

8 Q Mr. Marcus, do you recall seeing this
9 letter before that's Ladd Exhibit 62?

10 A I do not recall it.

11 Q Do you recall any request for a waiver of
12 Conflict of Interest from MGT by Sichenzia?

13 A I do not.

14 Q Did you ever discuss any -- withdrawn.
15 Well let me ask you again. And maybe you answered this
16 already and I've just forgotten. Did Mr. Kesner have a
17 role with respect to the two financings we've been
18 discussing, 2012 and 2015?

19 A No. I don't recall what his role was, but
20 I'd say yes. But I don't recall what it was.

21 Q Do you recall did he have a client? Was he
22 representing someone on those financings?

23 A Not to my knowledge. I know that those
24 people were his clients or Barry Honig was a client of
25 his.

1 those financings, did you -- did you understand Mr.
2 Kesner to have any sort of conflict when he spoke to you
3 about those issues because Mr. Honig was also a client
4 of his?

5 A I don't recall.

6 Q You don't recall? Do you ever recall
7 Sichenzia representing -- and I'm not talking about
8 these particular transactions, but do you ever recall
9 Sichenzia representing two different parties who were on
10 opposite sides of the same transaction?

11 A Of the same transaction? No, I don't.

12 Q Is that something that you would feel
13 comfortable doing? I'm just asking you in general.

14 A It would depend on the transaction and that
15 we got a waiver. On other clients -- I'm trying to
16 think I've ever represented both sides. And more -- my
17 familiarity directly was with clients that we
18 represented on transactions where the other side may be
19 clients that we've also represented in the past. But
20 not on the particular.

21 Q And would you say both of those situations
22 that we're talking about present a conflict, a potential
23 conflict, for Sichenzia?

24 A If they did on both sides, yes.

25 Q I'm sorry. Can you just explain what you

1 mean by that?

2 A If it was a situation where you represented
3 the investor and you represented a company, I think
4 there would clearly be a conflict of interest.

5 Q And that particular kind of conflict, I
6 assume, would need to be disclosed to both clients?

7 A Correct.

8 Q And you would need to obtain both clients'
9 consent to proceed. Correct?

10 A Yes.

11 Q On the 2012 financing were you aware of a
12 Honig being involved with a group of investors who were
13 investing together?

14 A In the 2012 transaction?

15 Q Yes.

16 A There was a group of them. A list of them.

17 Q I'm sorry. A list of them?

18 A There was a list of investors that were in
19 the transaction. It wasn't just Mr. Honig.

20 Q And was there a particular relationship
21 between that list of investors and Mr. Honig?

22 A Not to my knowledge at the time.

23 Q Let me direct your attention back to --
24 withdrawn. We'll come back to it. Are you familiar
25 with Section 13(d) that -- of the Securities and

1 asked you if MGT was asked that question and you said

2 Mr. Kesner was asked. Is that right?

3 A I said I asked Mr. Kesner.

4 Q Why did you ask Mr. Kesner?

5 A Because Mr. Kaplowitz advised me to.

6 Q Did you understand Mr. Kesner to be

7 representing MGT for that purpose?

8 A No.

9 Q So let me go back to my original question.

10 A Sure.

11 Q Did you or anyone at Sichenzia ask MGT

12 whether it was directly or through MGT counsel that

13 question about -- or discussed that question whether Mr.

14 Honig and others were acting as a group with respect to

15 the 2012 financing?

16 A Not to my knowledge.

17 Q And why is that?

18 A I don't recall.

19 Q Now you mentioned that Mr. Kaplowitz asked

20 you to ask Mr. Kesner a question about that. What did

21 Mr. Kaplowitz ask you to ask him?

22 A If the investors were acting as a group.

23 Q And then you did that?

24 A Yes.

25 Q When was that? When were these

1 conversations?

2 A In 2012.

3 Q Was it prior to the closing of the 2012
4 financing?

5 A That, I don't recall the time.

6 Q Did you discuss with Mr. Kaplowitz why he
7 wanted you to ask that question?

8 A No.

9 Q Did you have any understanding of why you
10 were asking Mr. Kesner that question?

11 A Because Mr. Kesner had a familiarity with
12 these -- with some of these investors having had
13 represented them.

14 Q But what I'm asking is -- I understand
15 that. I'm asking something a little bit different. Did
16 you have reason to believe that Mr. Honig might be
17 acting as a group with other investors?

18 A No.

19 Q So I'm just trying to understand why ask
20 that question.

21 A Because -- you'd have to ask -- Mr.
22 Kaplowitz asked me to ask it, so I asked it.

23 Q And you didn't ask -- and you didn't have
24 any further discussion about it with Mr. Kaplowitz?

25 A No.

1 you have any understanding -- well, let me just ask it
2 this way. Did you have an understanding at that time,
3 the time of this e-mail, that some of the other
4 investors in the 2012 financing had been co-investors
5 with Mr. Honig on previous transactions?

6 A No. I knew some of the other investors
7 actually, but Mr. Honig.

8 Q Let's go back to -- let's go back to the
9 e-mail chain. Then the next e-mail is at 7:24 and Mr.
10 Kesner says no with an exclamation mark.

11 Do you see that?

12 A Mm-hmm.

13 Q Is that a yes?

14 A I'm sorry, yes.

15 Q And what is your understanding that he's
16 saying no to?

17 A Are they acting as a group.

18 Q And when you're talking about -- with Mr.
19 Kesner about whether Mr. Honig and any of the other
20 investors are acting as a group, for what purpose are
21 you having that exchange?

22 A Mr. Kaplowitz asked me to find out if they
23 were acting as a group.

24 Q Did it have anything to do with the 13(d) 5
25 percent requirement that we were talking about before?

1 Q It looks like, if you look at the next
2 e-mail in the chain, that you forwarded this e-mail
3 chain to Mr. Ladd. Do you see that? At 6:11 a.m. on
4 October 19, 2012. Do you see that? Do you see that,
5 Mr. Marcus?

6 A Not yet. Give me a second. Yes, I do.

7 Q I'm sorry. Before that, you first stated
8 Mr. Kesner, I found it so no need. I'm sorry. I found
9 it so need. Do you see that?

10 A It should have been no need.

11 Q It should have been no need, okay. What
12 did you mean by that?

13 A He asked do I have a list of investors and
14 I said I have.

15 Q And then after that, I'm sorry, you
16 forwarded to Mr. Ladd this e-mail chain. Correct? Do
17 you see that above your answer? I found it, so need.

18 A Yeah, I don't think I forwarded the chain.
19 I think I was working off my Blackberry -- my --
20 Blackberry. My iPhone, so it like automatically
21 attached. It was all chain e-mails to -- just got an
22 iPhone. I had a lot of difficulty using it when I first
23 got it. When I first got to Sichenzia was the first
24 time I used an iPhone as opposed to a Blackberry. And I
25 think it syncs all the messages together in some manner

1 like that.

2 Q So let me make sure I understand what
3 you're saying. Did you have any particular intention of
4 forwarding to Mr. Ladd in this -- in this e-mail that
5 you sent to him, your exchange with Mr. Kesner about
6 whether Mr. Honig and others were acting as a group?

7 A I don't recall.

8 Q Why did you -- why did you e-mail Mr. Ladd
9 here? It looks like a forward but why did you e-mail
10 him and then say the list all but -- what was the
11 purpose of that?

12 A I don't recall.

13 Q Can you tell from reading any more of the
14 chain that that it goes on?

15 A I'd be speculating, but I'd say that we had
16 to give a list of the investors to the New York Stock
17 Exchange.

18 Q Before I get to that, let me ask you. Mr.
19 Kesner, when he responded no he used an exclamation
20 mark. You saw that. Right?

21 A Mm-hmm.

22 Q Do you have any understanding of why he
23 responded with that strong response with an exclamation
24 mark to your question about groups?

25 A No, I don't.

1 Q Did you consider that issue to be an issue
2 of importance?

3 A I don't remember specifically, but yes, I
4 would.

5 Q Why is that?

6 A Because of the 13(d) requirements.

7 Q Did you ever -- after receiving this e-mail
8 from Mr. Kesner, did you ever discuss this group issue
9 with Mr. Kesner in any -- in any way?

10 A Not to my recollection.

11 Q Did you ever discuss it with Mr. Ladd?

12 A Not to my recollection.

13 Q Did you ever discuss it with anyone else at
14 MGT other than Mr. Ladd?

15 A Not to my recollection.

16 Q Other than Mr. Kaplowitz asking you to ask
17 Mr. Kesner that question, did you have any other
18 discussions about this group requirement and Mr. Honig
19 with anyone else at Sichenzia?

20 A Not to my recollection.

21 Q When you sent this e-mail to Mr. Ladd, this
22 e-mail chain, did you intend for Mr. Ladd to rely in any
23 way on Mr. Kesner's statement about the Honig investors
24 not being a group?

25 A No, but as I said, I think it's a chain of

1 e-mails that got linked together.

2 Q So it -- the point of your sending that
3 e-mail, what I hear you testifying to, the point of it
4 was not to forward that exchange you had with Mr. Kesner
5 and Mr. Ladd?

6 A That's correct.

7 Q And did you -- did you ever have a sense
8 that Mr. Ladd was relying on that exchange you had with
9 Mr. Kesner regarding this 13(d) issue and Mr. Honig
10 being involved with a group?

11 A Not to my --

12 MR. RASTOGI: I object to the form. I
13 don't know what sense --

14 Q As you sit here today, do you think that it
15 was reasonable for Mr. Ladd to rely on that exchange
16 between you and Mr. Kesner with respect to whether Mr.
17 Honig and others were acting as a group regarding the
18 2012 financing?

19 MR. FORD: I'm going to object to the
20 foundation of that question.

21 Q Do you understand the question?

22 A I do.

23 Q Can you please answer?

24 A Could you ask it one more time?

25 MR. KAUFMAN: Could the court reporter just

1 context was for that question with Mr. Kaplowitz?

2 A I don't recall.

3 Q And why do you recall that conversation at
4 all?

5 A Well, I think partially because a while
6 back, a while back being right before the pandemic, I
7 had a conversation with a lawyer from Kramer Levin who
8 was representing Mr. Ladd and he kind of went back to
9 that same e-mail. So I don't know if I really remember
10 it from the original or if I remember it because
11 somebody told me about it about sometime before COVID
12 like four years -- three, four years ago.

13 Q So it was looking at the e-mail that
14 refreshed your memory about the conversation with Mr.
15 Kaplowitz?

16 A I believe so.

17 Q And who was the Kramer Levin attorney?

18 A I don't know.

19 Q What was the context in which he or she was
20 asking you that question?

21 A It was similar to this was that, you know,
22 do you remember advising him on this or having a
23 conversation and I said I didn't. And they said does
24 this refresh your memory and they sent the e-mail, the
25 same e-mail.

1 Q And that lawyer was representing Mr. Ladd
2 at the time?

3 A I believe so.

4 Q Was his name Sean Coffey?

5 A I don't remember.

6 Q And do you know what the context was of
7 this lawyer asking you that question?

8 A I understood that he was representing Mr.
9 Ladd in the SEC matter against him.

10 MR. FORD: Jack, this is what I -- I think
11 I've got to object into further inquiry because I think
12 this is getting outside the waiver are.

13 A I'm a little -- so I think we're going to
14 object. And I also think -- well I'll just leave it at
15 that. We can have a further conversation if you need
16 with that outside Mr. Marcus' presence, but I think I've
17 said enough for now.

18 MR. KAUFMAN: Okay. All right.

19 Q So and after you got this response from Mr.
20 Kesner where he says no with an exclamation mark in this
21 e-mail, did you have a further conversation with Mr.
22 Kaplowitz about this subject?

23 A I believe so, but I don't recall exactly.

24 Q What makes you think you did have such a
25 conversation?

1 standard.

2 Q You had testified that Mr. Kaplowitz asked
3 you to ask Mr. Kesner if Honig was acting as a group
4 with others. And then we saw that you asked him and
5 that he said no and then the next day, he's saying so
6 not acting as a group. And so my question is is this
7 related to --

8 A Who's -- who's saying?

9 Q I'm sorry?

10 A Who was --

11 Q This e-mail that we're looking at now, Mr.
12 Kesner is saying need separate letters so not acting as
13 a group.

14 Do you see that?

15 A Yep.

16 Q Did you make any connection between that
17 and the question you had asked him the day before about
18 whether Honig and others were acting as a group?

19 A No. Not to my knowledge. My knowledge was
20 that there was a -- my memory was that there was some
21 type of a signed letter that all these investors were
22 going to have to execute. And these are the things that
23 they want to be covered in it.

24 Q When you received this e-mail from Mr.
25 Kesner, did you understand what his role was here in the

1 transaction?

2 A He was kind of a go-between, my
3 understanding was.

4 Q Between who and who?

5 A Between Barry Honig, who was the lead
6 investor, and with company.

7 Q And when you say a go-between, was -- I
8 mean I asked you this before but was he representing Mr.
9 Honig on the transaction?

10 A Not to my knowledge.

11 Q What does a go-between mean then? I'm just
12 trying to understand.

13 A The general -- he had the contact, so I
14 didn't pick up the phone and called Mr. Honig or there
15 were only people were have to sit in bed. You know,
16 Harvey -- it was easy for Harvey to try and get that
17 information, I guess.

18 Q Did you understand Mr. Honig -- did he
19 convey this information to you to have Mr. Honig's --

20 A Mr. Honig didn't convey the information to
21 me.

22 Q I'm sorry. When Mr. Kesner conveyed this
23 information to you, was he acting mostly in the interest
24 of MGT? Or was he acting in the interest of Mr. Honig?

25 A I don't know. I'd have to speculate.

1 don't know.

2 Q When Mr. Kesner answered no to your
3 question of whether Honig was acting as a group, did you
4 understand that to be Mr. Kesner's own personal view?
5 Or what?

6 MR. FORD: Object to form.

7 A His own --

8 Q Okay.

9 MR. FORD: You can answer. I'll -- but Mr.
10 Marcus, just going forward, if I object to form, it's
11 just for the record. I'm not instructing you not to
12 answer.

13 MR. KAUFMAN: Thank you, Adam.

14 A Yes. That was I think the view of it.

15 Q Did you do any independent -- you or anyone
16 else at Sichenzia do any independent analysis of whether
17 Honig and others were acting as a group aside from what
18 Mr. Kesner told you?

19 A Just that they believe the documents the
20 investor reps gave some representations that they
21 weren't -- if they were buying independently so their
22 only account that there was no proof.

23 Q I'm sorry. Who gave those representations?

24 A Generally the investor gives some
25 representation like that in -- documents. Something

1 like that.

2 Q And did you ever discuss any of that with
3 Mr. Ladd?

4 A No, not to my knowledge. Or not to my
5 recollection.

6 Q And did you come to the same conclusion
7 that Mr. Kesner came to that Mr. Honig and others were
8 not acting as a group for 13(d) purposes?

9 A I didn't challenge that at all.

10 Q And why was that?

11 A There was -- if you didn't know the
12 reasons, you would assume that all those investors were
13 acting as a group. And since we had asked the question
14 and been told the answer was no, I don't think we ever
15 had any further discussions on it actually.

16 Q Do you have -- you should have number 39,
17 I'll call it tab 39 which has been marked as AM 11.

18 (AM Exhibit 11 was marked for
19 identification.)

20 A Yes, I have.

21 Q And this is an e-mail dated October 19,
22 2012. The top one is from Mr. Ladd, to you, copying Mr.
23 Traversa.

24 Do you see that?

25 A I do.

1 Q Did Mr. Ladd confer with anyone from
2 Sichenzia before replying with that response?

3 A I don't recall, no.

4 Q Do you have any reason to believe that he
5 did?

6 A No, I have no reason to believe that he
7 did.

8 Q Do you know what Mr. Ladd based that
9 response on? No, not to the company's knowledge.

10 A What he based it on?

11 Q Yes.

12 A No.

13 Q Did you ever discuss this exchange with Mr.
14 Ladd or anyone else at MGT?

15 A Which exchange?

16 Q This e-mail exchange. This response to the
17 New York Stock Exchange.

18 A No. It looks like he answered pretty
19 instantly.

20 Q Did you discuss it with anyone else other
21 than someone at MGT?

22 A No.

23 Q Let me ask you to look at tab 17, which has
24 been marked as JK 9.

25 A Yes, I have it in front of me.

1 conversation we had at some point.

2 Q You're saying you had the conversation
3 about those topics with Mr. Ladd?

4 A Or Mr. Kaplowitz. Somebody or maybe both
5 of them. I don't remember. I remember a conversation
6 as to why it had a 4.99 and 9.99 in there.

7 Q But you're saying 4.99, was that -- was
8 that a provision in the financing? The 2012 financing.

9 A It was a beneficial ownership limitation
10 that you see.

11 Q And you discussed that with Mr. Kaplowitz?
12 I'm sorry. Are you still there?

13 A Yes, I'm -- can you see me or no?

14 Q We can see you now.

15 A Okay. Good.

16 Q Hear the question?

17 A No, if you could repeat it. I had a call.

18 Q Did you discuss the 4.99 percent provision
19 with Mr. Kaplowitz?

20 A I don't recall.

21 Q What about with Mr. Ladd?

22 A I don't recall.

23 Q And is the 9.99 percent issue, is that
24 related to Section 16?

25 A That's right. Yes.

1 Q And were you aware that Honig then was
2 involved in promoting MGT stock after the 2012
3 financing?

4 A I don't have any recollection of that.

5 Q Were you aware that Mr. Honig arranged for
6 Mr. Ladd to be interviewed for a November 2012 Seeking
7 Alpha article about MGT?

8 A I have no recollection of that.

9 Q And did you know that Mr. Honig compensated
10 the Seeking Alpha, the author of that piece, to write
11 that piece?

12 A I have no knowledge of that.

13 Q And were you aware that after the piece
14 came out, this was in 2013, that MGT's stock price rose?

15 A No, I don't.

16 Q And are you aware that then some of these
17 same investors sold their MGT stock in 2013?

18 A I don't recall when they sold their shares.

19 Q And you're saying you didn't know any of
20 that in 2015 at the time of this S-1 that we've been
21 looking at?

22 A I generally wouldn't know when anybody sold
23 their shares unless --

24 Q So my question is if you had been aware of
25 that information about Mr. Ladd being interviewed for

1 the Seeking Alpha article that Mr. Honig paid for in
2 promoting MGT and then selling shareholders -- selling
3 their shares in 2013, is that information that you would
4 have wanted to consider in determining in 2015 whether
5 this group of investors was acting as a group for
6 Section 13 purposes?

7 A No, not necessarily.

8 Q What do you mean by that?

9 A Stock goes up. The stock goes down. If
10 the stock is up, people sell their shares. I don't
11 think that would have affected me to say oh, this guy
12 sold the shares, that guy didn't, this guy did, this guy
13 didn't. I don't think I would do that analysis. I've
14 never done it before.

15 Q Well what if the stock price went up
16 because Mr. Honig engineered that to happen? Would that
17 have affected your analysis?

18 MR. RASTOGI: Objection to form,
19 foundation.

20 Q You can answer it if you understand.

21 A I think the answer is that I had no
22 knowledge of it.

23 Q I understand that. I'm asking you a
24 hypothetical question. If you had had that knowledge,
25 would that have affected your analysis?

1 Q You understood in 2015 that Mr. Honig had a
2 mixed reputation?

3 A By 2015, I think I did, yeah. And just in
4 general people would make comments.

5 Q What do you mean by mixed reputation?

6 A What's that?

7 Q What do you mean by mixed reputation?

8 A I think some people thought he was a bad
9 investor.

10 Q What do you mean by that?

11 A That somebody could hurt a company if you
12 put him in there.

13 Q I'm sorry. That he could hurt a company,
14 you said?

15 A Yeah, some investors are good investors,
16 and some aren't. It's just the nature of the practice.

17 Q Did you ever hear anything derogatory about
18 Mr. Honig other than that he wasn't a good investor?

19 A No, not really.

20 Q Did Mr. Ladd ever tell you or did you ever
21 hear Mr. Ladd -- that Mr. Ladd didn't trust Mr. Honig?

22 A I didn't know that.

23 Q Did you ever hear Mr. Ladd say -- or hear
24 of Mr. Ladd saying anything else derogatory about Mr.
25 Honig?

1 A No.

2 Q Did Mr. Ladd ever -- withdrawn. Did you
3 ever -- did you ever hear that Mr. Ladd had an exchange
4 with the hedge fund manager, David Einhorn?

5 A I don't recall that. But I looked at
6 e-mails and the exhibits and I did see that.

7 Q I'll just direct your attention to tab 9.

8 MR. RASTOGI: And you need to be testifying
9 about your knowledge and not what you read.

10 THE WITNESS: Okay.

11 Q Yeah, this is Honig Exhibit 10. It's an
12 e-mail exchange between Robert Ladd and David Einhorn.
13 And I understand you're not on this exchange. Mr.
14 Marcus, you'll see there's an e-mail from Mr. Einhorn
15 where he says some things about Mr. Honig. He calls him
16 a recidivist stock promoter. Do you see that on the
17 second page?

18 A I do.

19 Q Did you ever hear -- so I'm not asking you
20 if you received this. But did you ever hear of an
21 exchange like that that Mr. Ladd had with Mr. Einhorn?

22 A No, I did not.

23 Q Did you understand Mr. Honig at any time to
24 have been a recidivist stock promoter?

25 A No, I didn't.

1 for that disclosure requirement to try to alert the
2 public to people controlling the company for the purpose
3 of doing a pump and dump?

4 A No.

5 Q You don't understand that?

6 A I understand it. I don't -- that's not the
7 way I interpreted the purpose of 13(d).

8 Q Let me ask you to turn to tab 18, which is
9 Ladd Exhibit 40.

10 A Okay. I have it in front of me. The 10-K.

11 Q This is a Form 10-K for the fiscal year
12 ended December 31st, 2015, for MGT. Do you see that?

13 A I do.

14 Q Did you have any involvement in drafting or
15 filing this document?

16 A Not that I recall.

17 Q Did you have any discussion with anybody
18 about the disclosure of 5 percent owners that was made
19 in this document?

20 A No. Not that I recall.

21 Q Were you -- if you could turn to tab 19.
22 This is Holmes Exhibit 21.

23 A I have it.

24 Q And you'll see it's a copy of an article in
25 Small Cap Reader dated February 23rd, 2016. And if you

1 turn to the second page, the first sentence says MGT
2 Capital Investments is our new alert on the New York
3 Stock Exchange market, and we believe there's a strong
4 potential for upsides in current levels.

5 Do you see that?

6 A I do.

7 Q Have you ever seen this or heard of this
8 article before?

9 A No.

10 Q Did you have any knowledge of Mr. Honig
11 asking Mr. Ladd to pay a promoter to promote MGT stock
12 in 2015?

13 A Not that I recall.

14 Q Are you aware that after this article came
15 out, MGT stock price rose considerably?

16 A I'm not.

17 Q You're not? And are you aware that this
18 piece was paid for by MGT?

19 A No, I'm not.

20 Q And are you aware that after the piece came
21 out and the stock price rose, Mr. Ladd, Mr. Honig, Mr.
22 Stetson, and Mr. O'Rourke all sold MGT stock at a
23 profit?

24 A No, I wasn't.

25 Q Is that kind of information something that

1 full half hour to 45 minutes.

2 MR. KAUFMAN: Okay.

3 (Whereupon a short recess was taken.)

4 EXAMINATION BY MR. KAUFMAN:

5 Q Mr. Marcus, do you recall MGT entering into
6 an asset purchase agreement in 2015 with a company
7 called D-Vasive?

8 A Yes.

9 Q And did you have any involvement in that
10 transaction?

11 A Very limited. I dealt with a Joe Laxague
12 on some Nevada issue. I don't remember the issue
13 exactly, but that was kind of my limited role in the
14 D-Vasive transaction.

15 Q Do you recall MGT announcing the
16 transaction in 2016?

17 A No, I don't.

18 Q Let me see if this refreshes your memory.
19 I don't know, but if you could look at tab 20. Oh, I'm
20 sorry.

21 Holmes Exhibit 26.

22 A Okay. I have that.

23 Q Yep. The document titled Form 8-K for MGT
24 Capital --

25 A Correct.